

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

Case No.: 3:19-cv-00230-MMD-WGC

TOMMIE LEE MCDOWELL, JR.,

Plaintiff

v.

HULSEY, et. al.,

Defendants

**Order**

Re: ECF No. 130

Before the court is Defendants' Motion to Strike Plaintiff's Responses to Defendants' Motion for Summary Judgment. (ECF No. 130.) Specifically, Defendants move to strike ECF Nos. 124 and 126.

**I. BACKGROUND**

The claims proceeding in this action include: (1) a retaliation claim against defendant Hulsey in Count I; (2) a retaliation claim against defendant Hulsey in Count II; and (3) a retaliation claim against defendant Reubart in Count IV.

Defendants filed their Motion for Summary Judgment on June 7, 2021. (ECF Nos. 118, 118-1 to 118-11.) On June 8, 2021, they filed an errata containing declarations that authenticate the exhibits supporting their motion. (ECF Nos. 120, 120-1, 120-2.)

On June 18, 2021, Plaintiff filed a response to Defendants' Motion for Summary Judgment that only pertained to Count IV against defendant Reubart. (ECF Nos. 122, 122-1 to 122-3.) On June 22, 2021, Plaintiff filed another response to Defendants' motion for summary judgment that again only pertained to Count IV against defendant Reubart. The title indicated that there had been a correction at page 6, lines 11, 13, and that this document superseded ECF

1 No. 122. (ECF Nos. 124, 124-1.) It appears that in the corrected, and superseding version of his  
2 response, he corrected the date of July 17, 2019, to July 17, 2017, at page 6, lines 11, 13. The  
3 response is otherwise the same except that the original response included ECF Nos. 122-1 to  
4 122-3, which are not included with the superseding responses regarding Count IV against  
5 Reubart. ECF Nos. 122-1 to 122-3 actually contain Plaintiff's response to Defendants' Motion  
6 for Summary Judgment with respect to Counts I and II against Hulsey and supporting exhibits  
7 and declarations.

8 Then, on June 23, 2021, Plaintiff filed ECF Nos. 126, 126-1 to 126-3. This is titled as  
9 Plaintiff's response to Defendants' Motion for Summary Judgment regarding Counts I and II  
10 against Hulsey, and Plaintiff specifically notes that this supersedes and supplants ECF No. 122-1.

11 Defendants acknowledge that ECF No. 124 was filed to correct a minor mistake in the  
12 original filing. Defendants' move to strike ECF Nos. 124 and 126 because when combined they  
13 exceed the page limit for a response to a motion for summary judgment.

14 In his response to the motion to strike, Plaintiff notes that he submitted ECF No. 124 and  
15 124-1 which corrected a minor mistake in ECF No. 122. The brief in ECF No. 124 is 21 pages in  
16 length, including the certificate of service and exhibit list. Then, he re-submitted his response to  
17 the motion for summary judgment regarding Counts 1 and 2 in ECF Nos. 126, 126-1 to 126-3.  
18 That brief is 22 pages in length, including the certificate of service.

19 Plaintiff argues that Count IV is a separate supplemental claim, and he himself filed  
20 separate motions for summary judgment on his claims, and therefore, he is in compliance with  
21 the page limit rule.

1 Plaintiff also asks that ECF Nos. 122, 122-1, 122-2, and 122-3 be stricken, because they  
2 are superseded by ECF Nos. 124 and 124-1, and ECF Nos. 126, 126-1 to 126-3. Finally, Plaintiff  
3 asks that ECF No. 131 be stricken.

## 4 II. DISCUSSION

5 Local Rule 7-3(a) provides that a motion for summary judgment and a response to a  
6 motion for summary judgment are limited to 30 pages, excluding exhibits. Parties must not  
7 circumvent this rule by filing multiple motions.

8 Local Rule 7-3(c) states that a party who wishes to exceed the page limits must file a  
9 motion to do so that is supported by good cause. Such a motion must be filed *before* the brief is  
10 due, and must include a declaration stating the reasons for and number of additional pages  
11 requested.

12 Preliminarily, to make the docket clearer, the court will strike ECF Nos. 122, 122-1 to  
13 122-3, since Plaintiff filed ECF Nos. 126, 126-1 to 126-3 to supersede those documents. Plaintiff  
14 does not provide any basis to strike ECF No. 131, and so that document will remain in the  
15 docket.

16 With respect to ECF Nos. 124 and 126, Plaintiff's filings clearly circumvent the Local  
17 Rule limiting a response to a motion for summary judgment to 30 pages. Plaintiff claims he was  
18 entitled to do so because Count IV is a separate supplemental claim, and he himself filed  
19 separate motions for summary judgment on his claims.

20 First, the fact that Count IV may have been asserted as a supplemental claim is  
21 inconsequential. Defendants filed a single motion for summary judgment addressing all three  
22 claims of retaliation proceeding in this case: Counts I, II and IV.<sup>1</sup> Under Local Rule 7-3(a),  
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<sup>1</sup> Plaintiff voluntarily dismissed Count V.

1 Plaintiff was entitled to file a response to the motion for summary judgment limited to 30 pages.  
2 If Plaintiff's response was going to exceed the page limit, it was incumbent upon him to file a  
3 motion to exceed the page limits in accordance with Local Rule 7-3(c) *before* the brief was due.  
4 Plaintiff did not do so.

5 Second, it is also immaterial that Plaintiff filed his own motions for summary judgment  
6 that separately addressed the claims. In so doing, Plaintiff himself was clearly circumventing LR  
7 7-3(a). *See* LR 7-3(c).<sup>2</sup>

8 Despite Plaintiff's failure to comply with the rule requiring leave to exceed the page  
9 limits, the court will exercise its discretion in this instance only to consider the briefing beyond  
10 the page limits since the briefing is filed in response to a motion for summary judgment which is  
11 potentially case dispositive, and Defendants reviewed the responses and filed a reply brief  
12 addressing Plaintiff's arguments and evidence. Therefore, Defendants' motion to strike is denied.

13 Plaintiff is cautioned that any future filings that exceed the page limits will be stricken by  
14 the court unless Plaintiff files motion to exceed the page limits that is supported by good cause  
15 *before* the brief is due. Plaintiff is also cautioned against circumventing the rule by filing  
16 multiple briefs.

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<sup>2</sup> Plaintiff's motions have been denied.(*See* ECF Nos. 121, 135.)

**CONCLUSION**

The Clerk is directed to **STRIKE** ECF Nos. 122, 122-1 to 122-3, as they are superseded by Plaintiff's filings at ECF Nos. 126, 126-1 to 126-3.

Defendants' motion to strike (ECF No. 130) is **DENIED**.

**IT IS SO ORDERED.**

Dated: October 8, 2021



William G. Cobb  
United States Magistrate Judge